

CHAPTER 484
UNIFORM LAND SALES PRACTICES ACT

SECTION

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§484-1 Definitions. When used in this chapter, unless the context otherwise requires:

"Commissioner of securities" means the director of commerce and consumer affairs in the director's capacity as commissioner of securities.

"Common promotional plan" means a plan, undertaken by a single developer or group of developers acting in concert, to offer subdivided lands for sale or lease; provided that where such land is offered for sale by the developer or group of developers acting in concert, and the land is contiguous or is known, designated, or advertised as a common unit or by a common name, the land shall be presumed, without regard to the number of lots covered by each individual offering, as being offered for sale or lease as part of a common promotional plan.

"Disposition" includes sale, lease, assignment, award by lottery, or any other transaction concerning a subdivision, if undertaken for gain or profit.

"Material change" means any change which either renders the information contained in the application or public offering statement misleading or which substantively affects the rights or obligations of a purchaser or a prospective purchaser of a subdivision lot, such as, but not limited to, change in the nature or usage of the subdivision, or change in the underlying encumbrances or restrictive covenants.

"Offer" includes every inducement, solicitation, or attempt to encourage a person to acquire an interest in land, if undertaken for gain or profit.

"Person" means an individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership, unincorporated association, two or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity.

"Public offering statement" means a statement that fully and accurately discloses the physical characteristics of the subdivided lands offered and all unusual or material circumstances or features affecting the subdivided lands. The statement shall include the information and statements required by section 484-6, and any other information or statements required by rules adopted by the director pursuant to chapter 91.

"Purchaser" means a person who acquires or attempts to acquire or succeeds to an interest in land.

"Subdivider" means any owner of subdivided land who offers the land for disposition or the principal agent of an owner, who has been duly authorized in a writing filed with the director.

"Subdivision" and "subdivided lands" means any land which is divided or is proposed to be divided for the purpose of disposition into two or more lots, parcels, units, or interests and also includes any land whether contiguous or not if two or more lots, parcels, units, or interests are offered as a part of a common promotional plan of advertising and sale.

§484-2 Administrative director. This chapter shall be administered by the director of commerce and consumer affairs, hereinafter called the director.

§484-3 Exemptions. (a) Unless the method of disposition is adopted for the purpose of evasion of this chapter, or unless the subdivider files in writing with the director that this chapter shall apply to the subdivider's subdivision, this chapter shall not apply to offers or dispositions of an interest in land:

- (1) By a purchaser of subdivided lands for the purchaser's own account in a single or isolated transaction;
- (2) If fewer than twenty separate lots, parcels, units, or interests in subdivided lands are offered by a person in a period of twelve months;
- (3) On which there is a residential, commercial, or industrial building, or as to which there is a legal obligation on the part of the seller to construct a building on the land within two years from date of disposition; provided that the obligation to construct shall not be, directly or indirectly, transferred to or otherwise imposed upon the purchaser;
- (4) To persons who are engaged in, and are duly licensed to engage in, the business of construction of buildings for resale, or to persons who acquire an interest in subdivided lands for the purpose of engaging, and do engage in, and are duly licensed to engage in, the business of construction of buildings for resale;
- (5) Pursuant to court order;
- (6) By any government or government agency;
- (7) As cemetery lots or interests; or
- (8) Registered as a condominium property regime pursuant to chapter 514A.

(b) Unless the method of disposition is adopted for the purpose of evasion of this chapter, or unless the subdivider files in writing with the director that this chapter shall apply to the subdivider's subdivision, this chapter does not apply to:

- (1) Offers or dispositions of evidence of indebtedness secured by a mortgage or deed of trust of real estate;
- (2) Offers or dispositions of securities or units of interest issued by a real estate investment trust regulated under any state or federal statute;
- (3) A subdivision as to which the plan of disposition is to dispose to ten or fewer persons;

- (4) Offers or dispositions of securities currently registered with the commissioner of securities of this State;
- (5) Offers or dispositions of any interest in oil, gas, or other minerals or any royalty interest therein if the offers or dispositions of the interests are regulated as securities by the United States or by the commissioner of securities of this State; and
- (6) Subdivisions of less than twenty lots, parcels, units, or interests, if the lots, parcels, units, or interests are all located in jurisdictions requiring the developer prior to sale to provide or post bond for road access, sewage disposal, water, and other public utilities, if the requirements have been complied with.

§484-4 Prohibitions on dispositions of interests in subdivisions. Unless the subdivided lands or the transaction is exempt by section 484-3:

- (1) No person may offer or dispose of any interest in subdivided lands located in this State, or offer or dispose in this State of any interest in subdivided lands located without this State before a preliminary or final order registering the subdivided land is entered in accordance with this chapter;
- (2) No person may dispose of any interest in subdivided lands unless a current public offering statement is delivered to the purchaser and the purchaser is afforded a reasonable opportunity to examine the public offering statement prior to the disposition.

§484-5 Application for registration. (a) The application for registration of subdivided lands shall be filed in accordance with this chapter and rules adopted by the director pursuant to chapter 91, and shall contain the following documents and information:

- (1) An irrevocable appointment of the director to receive service of any lawful process in any noncriminal proceeding arising under this chapter against the applicant or the applicant's personal representative;
- (2) A map or maps of the subdivided lands offered for registration showing the name and location of the subdivided lands, the division proposed or made, the topographic features of the lands, and the land area of the lots, parcels, units, or interests and the relation of the subdivided lands

to existing and proposed streets, roads, easements, and other off-site improvements;

- (3) The states or jurisdictions in which an application for registration or similar document has been filed, and any adverse order, judgment, or decree entered in connection with the subdivided lands by the regulatory authorities in each jurisdiction or by any court;
- (4) The applicant's name, address, and the form, date, jurisdiction of organization, current evidence of being admitted to conduct business in this State, and the address of each of the applicant's offices in this State;
- (5) The name, address, and principal occupation for the past five years of every director and officer of the applicant or person occupying a similar status or performing similar functions, including, but not limited to, every director and officer of the managing general partner of a partnership; and the extent and nature of the director's and officer's or person's interest in the applicant or the subdivided lands as of a specified date within thirty days of the filing of the application;
- (6) A statement, in a form acceptable to the director, of the condition of the title to the subdivided lands containing a legal description of the subdivided lands offered for registration, including all encumbrances thereon, as of a specified date within thirty days of the date of application by a title report prepared by a title company authorized to do business in the State of Hawaii, or a title opinion of a licensed attorney, not a salaried employee, officer, or director of the applicant or owner, or by other evidence of title acceptable to the director;
- (7) Copies of the instruments which will be delivered to a purchaser to evidence the purchaser's interest in the subdivided lands and copies of the contracts and other agreements which a purchaser will be required to agree to or sign;
- (8) Copies of the instruments by which the interest in the subdivided lands was acquired by the subdivider and a statement of all liens and encumbrances upon the subdivider's title to the subdivided lands, and copies of the instruments creating the liens or encumbrances, if any, with data as to recording;
- (9) If there is a monetary lien or encumbrance affecting more than one lot, parcel, unit, or interest, a statement of the consequences to a purchaser in the event of a failure to discharge the lien or encumbrance and the steps, if any, taken to protect the purchaser in case of this eventuality;

- (10) Copies of instruments creating easements, restrictions, or other encumbrances, and a statement describing all proposed easements, restrictions, or other encumbrances, affecting the subdivided lands;
- (11) A statement of any existing tax and existing or proposed special taxes or assessments which affect the subdivided lands and evidence that all current taxes and assessments have been paid;
- (12) A statement of the existing provisions for access, sewage, disposal, water, and other public utilities in the subdivision; a statement of the improvements to be installed, the completion schedule, and a statement as to the provisions for improvement maintenance;
- (13) A narrative description of the promotional plan for the disposition of the subdivided lands together with copies of all advertising material which have been prepared for public distribution by any means of communication, or a statement that no such advertising material have been produced as of the date of application;
- (14) The proposed public offering statement and a copy of the receipt for the public offering statement;
- (15) An executed copy of the escrow agreement between the subdivider and a bank, savings and loan association, trust company authorized to do business in the State under an escrow arrangement, or a corporation licensed as an escrow depository under chapter 449; which agreement:
 - (A) Provides that all funds and instruments received from purchasers or prospective purchasers shall be held by the escrow agent in accordance with this chapter and any rules adopted by the director pursuant to chapter 91;
 - (B) Complies with the requirements of this chapter and any rules adopted by the director pursuant to chapter 91; and
 - (C) Contains a statement that no disbursement shall be made from the escrow account to or on behalf of the subdivider until the director enters a final order registering the subdivided land and until the requirements of sections 484-8.6(b) and (c) and 484-8.7 have been met;
- (16) Any other documents or information, including any current financial statement, which the director by the director's rules requires:
 - (A) For the protection of purchasers; or
 - (B) To obtain, or as a result of having obtained, certification of Hawaii law by the Secretary of the Department of Housing and Urban Development pursuant to 15 U.S.C. section 1708;

- (17) A statement which indicates the existing zoning and the land use designation of each lot and the proposed use of each lot in the subdivision, including, without limitation, such uses as roadway lots, residential dwellings, churches, agriculture, hospitals, schools, low density apartments, high density apartments and hotels, and a subdivision map which shows such information;
- (18) If federal registration is required, the date of registration (date of filing if pending registration) and a copy of the "Statement of Record";
- (19) A letter of preliminary or final subdivision approval, or both, from the county or other appropriate jurisdiction;
- (20) A description of a road maintenance fund or any other maintenance fund that may have been established by the developer;
- (21) A specimen of a receipt for the written notice advising of the purchaser's right to rescind a contract within seven days after signing the contract, without penalty to the purchaser;
- (22) An executed copy of a listing agreement between the subdivider and a real estate broker duly licensed and in good standing under the laws of this State;
- (23) The name, address, and telephone number of the subdivider's representative or real estate broker in this State; and
- (24) A statement that the subdivider has not, or if a corporation, the officers, directors, and principals, or if a partnership, general partners, have not been convicted of a crime involving land dispositions or any aspect of land sales business in the United States or any foreign country within the past ten years, and have not been subject to any injunction or administrative order within the past ten years restraining a false or misleading promotional plan involving land dispositions.

(b) If the subdivider registers additional subdivided lands to be offered for disposition, the subdivider may consolidate or incorporate by reference the subsequent registration with any earlier registration offering subdivided lands for disposition under the same common promotional plan if the subdivider files an application for the subsequent registration within two years after a final order of registration has been issued in connection with the earlier registration.

(c) The application shall be submitted with payment of the appropriate registration, consultant, and inspection fees.

(d) The subdivider shall immediately report any material changes in the information contained in any application for registration.

§484-6 Public offering statement. (a) A public offering statement shall disclose fully and accurately the physical characteristics of the subdivided lands offered and shall make known to prospective purchasers all unusual and material circumstances or features affecting the subdivided lands. The proposed public offering statement submitted to the director shall be in a form prescribed by the director's rules and shall include, but not be limited to, the following:

- (1) The name and principal address of the subdivider;
- (2) A general description of the subdivided lands stating the total number of lots, parcels, units, or interests in the offering;
- (3) The significant terms of any encumbrances, easements, current or proposed liens, and restrictions, including zoning and other regulations affecting the subdivided lands and each unit or lot, and a statement of all existing taxes and existing or proposed special taxes or assessments which affect the subdivided lands;
- (4) A statement of the use for which the property is offered;
- (5) Information concerning improvements, including streets, water supply, levees, drainage control systems, irrigation systems, sewage disposal facilities, and customary utilities, and the estimated cost, date of completion, and responsibility for construction and maintenance of existing and proposed improvements which are referred to in connection with the offering or disposition of any interest in subdivided lands;
- (6) Additional information required by the director to assure full and fair disclosure:
 - (A) To prospective purchasers; or
 - (B) To obtain, or as a result of having obtained, certification by the Secretary of the Department of Housing and Urban Development pursuant to 15 U.S.C. section 1708;
- (7) A statement which indicates the existing zoning and the land use designation of each lot and the proposed use of each lot in the subdivision, to include without limitation such uses as roadway lots, residential dwellings, churches, agriculture, hospitals, schools, low density apartments, high density apartments and hotels, and a subdivision map which shows such information; and
- (8) A statement that the purchaser has a seven-day period, after signing a contract to purchase subdivided lands from the subdivider, to rescind the contract at no penalty to the purchaser.

(b) The public offering statement shall not be used for any promotional purposes before registration of the subdivided lands and afterwards only if it is used in its entirety. No person may advertise or represent that the director approves or recommends the subdivided lands or disposition thereof. No portion of the public offering statement, except for headings, may be underscored, italicized, or printed in larger or heavier or different color type than the remainder of the statement unless the director requires it or as prescribed in rules adopted in accordance with chapter 91.

(c) The director may require the subdivider to alter or amend the proposed public offering statement in order to assure full and fair disclosure to prospective purchasers, and no change in the substance of the promotional plan or plan of disposition or development of the subdivision may be made after registration without notifying the director and without making appropriate amendment of the public offering statement. A public offering statement is not current unless all amendments are incorporated.

§484-7 Notice of filing; inquiry and examination. Upon receipt of a complete application for registration in proper form, including all standardized application forms, if any, prescribed by the director, the director shall issue a notice of filing to the applicant subject to section 484-20, and forthwith initiate an examination to determine that:

- (1) The subdivider can convey or cause to be conveyed the interest in subdivided lands offered for disposition if the purchaser complies with the terms of the offer, and when appropriate, that release clauses, conveyances in trust, or other safeguards have been provided;
- (2) There is reasonable assurance that all proposed improvements will be completed as represented;
- (3) The advertising material and the general promotional plan are not false or misleading and comply with the standards prescribed by the rules adopted by the director and afford full and fair disclosure;
- (4) The subdivider has not, or if a corporation, its officers, directors, and principals have not, been convicted of a crime involving land dispositions or any aspect of the land sales business in this State, United States, or any other state or foreign country within the past ten years and has not been subject to any injunction or administrative order within the past ten years restraining a false or misleading promotional plan involving land dispositions;

- (5) The public offering statement requirements of this chapter and the rules have been satisfied;
- (6) The purchaser has a seven-day period, after signing a contract to purchase subdivided lands from the subdivider, to rescind the contract at no penalty to the purchaser, and the subdivider has established a mechanism by which the purchaser will receive and sign a receipt for a written notice of such rescission right and the receipt will be deposited with the escrow agent; and
- (7) Preliminary or final subdivision approval has been granted by the county in which the land is situated.

§484-8 Orders of registration and rejection; general provisions. (a)

Within forty-five days from the date of the notice of filing, the director shall enter a preliminary or final order registering the subdivided lands or rejecting the registration.

Unless the applicant has consented in writing to a delay, the land shall be deemed registered if the director fails to enter an order of rejection within forty-five days from the date of the notice of filing.

(b) If, in the case of an application for a final order of registration, the director affirmatively determines, upon inquiry and examination, that the requirements of section 484-7 have been met, the director shall enter a final order registering the subdivided lands and shall designate the form of the public offering statement.

(c) If the director determines upon inquiry and examination that, in the case of an application for a final order of registration, any of the requirements of section 484-7, have not been met, the director shall notify the applicant that the application for a final order of registration must be corrected in the particulars specified within forty-five days. If the requirements are not met within the time allowed the director shall enter an order rejecting the registration which order shall include the findings of fact upon which the order is based. The order rejecting the registration shall not become effective for twenty days during which time the applicant may petition for reconsideration and shall be entitled to a hearing.

§484-8.5 Preliminary order of registration. (a) The director shall enter a preliminary order of registration when:

- (1) The director receives a request therefor together with a complete application for registration containing all information required under this

chapter, including, without limitation, all standardized application forms prescribed by the director;

- (2) The director affirmatively determines, upon inquiry and examination, that the applicable requirements of section 484-7 have been met except for some particular requirement or requirements

which is, or are, at the time not fulfilled, but which reasonably may be expected to be fulfilled; and

- (3) Preliminary subdivision approval has been granted by the county in which the land is situated.

No preliminary order of registration shall be issued unless the director is satisfied that the public offering statement adequately discloses all matters required by section 484-6(a) and the rules adopted by the director hereunder.

(b) If the director determines upon inquiry and examination that any of the requirements for issuance of a preliminary order of registration have not been met, the director shall notify the applicant that the application for a preliminary order of registration must be corrected in the particulars specified within forty-five days. If the requirements are not met within the time allowed the director shall enter an order rejecting the registration which order shall include the findings of fact upon which the order is based. The order rejecting the registration shall not become effective for twenty days during which time the applicant may petition for reconsideration and shall be entitled to a hearing.

(c) Upon issuance by the director of a preliminary order of registration, the subdivider may solicit and accept binding sales contracts (subject to any rights of rescission in favor of the purchaser as set forth in this chapter) or nonbinding reservation agreements to purchase the subdivided lands, notwithstanding any law requiring that final subdivision approval be granted prior to the offer or sale of subdivided lands; provided that all earnest money deposits, if any, received by the subdivider or the subdivider's agents shall take the form of a check or other instrument within the meaning of article 3 of chapter 490 and shall be payable to the escrow agent, and that no cash shall be accepted by the subdivider or the subdivider's agents.

(d) All sums paid by purchasers and prospective purchasers prior to the time the director issues a final order registering the subdivided lands shall be placed in an escrow account under an escrow agreement which provides that no disbursements shall be made from such escrow account to or on behalf of the subdivider until the director enters a final order registering the subdivided lands and the requirements of sections 484-8.7 and 484-8.6(b) and (c) have been met. However, the subdivider or the subdivider's agents may hold, until the expiration of the seven-day cancellation period provided by section 484-7(6) or any longer purchaser cancellation period (not exceeding sixty days) provided in the sales contract, any instrument made by a purchaser:

- (1) For which subsequent holders may not claim holder-in-due-course status within the meaning of article 3 of chapter 490; or
- (2) Where the payee is the escrow agent.

(e) Rights under contracts for the sale of subdivided lands, although binding on the purchasers, may not be enforced against the purchasers so as to require the purchasers to close until:

- (1) A final order of registration is entered by the director; and
- (2) The purchasers have had a full opportunity to obtain a refund of any sums paid and a release from the purchaser's obligations under the purchaser's sales contracts in accordance with section 484-8.7 or section 484-8.6(b) or (c).

§484-8.6 Final order of registration. (a) If the subdivider has obtained a preliminary order of registration, then upon the issuance of final subdivision approval of the subdivision by the county in which the land is situated, the subdivider shall submit to the director an application for a final order of registration which application shall contain, among other things:

- (1) A copy of the subdivision map for the subdivision and evidence satisfactory to the director that final subdivision approval has been granted by the county; and
- (2) A written statement disclosing any material changes to the subdivision which may have occurred between the date of preliminary subdivision approval and the date of final subdivision approval or a statement that no changes have occurred.

Upon receipt of the subdivider's application, the director shall enter a final order of registration or rejection, pursuant to section 484-8.

(b) As a condition to issuing a final order of registration for a subdivision with respect to which a preliminary order was entered, the director may require that the subdivider amend the public offering statement to provide fair and full disclosures to the purchasers of any material changes to the subdivision.

The amended public offering statement shall be delivered to the purchaser either personally or by certified or registered mail with return receipt requested, and at the same time the purchaser shall be notified in writing of the purchaser's right of refund and cancellation of obligation and the waiver of such right upon the purchaser's failure to act within a seven-day period. Each purchaser shall have a right to cancel the sales contract signed by the purchaser and receive a refund of all sums paid by the purchaser, without penalty, within the seven-day period from the date of delivery of the amended public offering statement after which period such right shall be deemed waived.

(c) If the final order of registration is not issued within one year from the date of entry of the preliminary order, each purchaser shall have a right to cancel the

sales contract signed by the purchaser and receive a refund of all sums paid by the purchaser; provided that if the final order is issued after the one-year period and a written notice is delivered to the purchaser either personally or by certified or registered mail with return receipt requested, notifying the purchaser of the issuance of the final order of registration and of the purchaser's right of refund and cancellation of obligation and the waiver of such right upon the purchaser's failure to act within a seven-day period, which notice shall be accompanied by any amended public offering statement required under subsection (b), the purchaser shall have seven days from the date of delivery of the notice to exercise the purchaser's right of refund and cancellation of obligation, after which period such right shall be deemed waived.

(d) The requirements of subsections (b) and (c) shall apply only to purchasers who sign a binding sales contract before the issuance of a final order of registration. The requirements of subsections (b) and (c) do not apply to prospective purchasers holding a reservation agreement which may be canceled at the request of the purchaser at any time prior to the execution by the prospective purchaser of a sales contract, or to persons who sign a sales contract or reservation agreement after the issuance of a final order by the director.

§484-8.7 Copy of amended public offering statements to be given to prospective purchasers. If a subdivider enters into a reservation agreement with a prospective purchaser for the subdivision before the issuance of a final order, any sales contract later entered into by the subdivider and that prospective purchaser after the final order is issued shall not be binding on the purchaser until the requirements of section 484-8.6(b) have been met, and unless any amended public offering statement required by the director under section 484-8.6(d) is provided to the prospective purchaser before the purchaser signs the sales contract.

The requirements of section 484-8.6(b) shall apply as if the purchaser had signed the purchaser's sales contract before the final order was entered by the director; provided that the requirements of this section shall not apply if the director does not require under section 484-8.6(b) that an amended public offering statement be prepared in connection with the issuance of a final order.

§484-8.8 Receipt for amended public offering statement. (a) Whenever the director requires pursuant to section 484-8.6(b) that an amended public offering statement be prepared by the subdivider, the subdivider shall obtain a receipt therefor from each purchaser or prospective purchaser who signed a sales contract or

reservation agreement to purchase subdivided lands before the issuance of the director's final order. If the amended public offering statement is delivered to the purchaser or prospective purchaser by certified or registered mail, return receipt requested, and the prospective purchaser does not execute and return the purchaser's receipt for the amended public offering statement within seven days from the date of delivery, the purchaser shall be deemed to have receipted for it; provided that the receipt shall be effective only if at the time of the delivery of the amended public offering statement the prospective purchaser is notified in writing of the fact that the purchaser will be deemed to have executed the receipt for it upon the purchaser's failure to act within the seven-day period.

(b) Receipts taken for any amended public offering statement shall be kept on file in possession of the subdivider, subject to inspection at any reasonable time by the director, for a period of three years from the date the receipt was taken.

§484-9 Annual report. (a) Within thirty days after each annual anniversary date of an order registering subdivided lands, the subdivider shall file a report in the form prescribed by the rules of the director of commerce and consumer affairs. The report shall reflect any material changes in information contained in the original application for registration.

(b) The director at the director's option may permit the filing of annual reports within thirty days after the anniversary date of the consolidated registration in lieu of the anniversary date of the original registration.

§484-10 General powers and duties. (a) The director shall prescribe reasonable rules which shall be adopted, amended, or repealed in compliance with chapter 91. The rules shall include, but not be limited to, provisions for advertising standards to assure full and fair disclosure; provisions for escrow or trust agreements or other means reasonably to assure that all improvements referred to in the application for registration and advertising will be completed and that purchasers will receive the interest in land contracted for; provisions for operating procedures; and other rules as are necessary and proper to accomplish the purpose of this chapter.

(b) The director by rule or by an order, after reasonable notice and hearing, may require the filing of advertising material relating to subdivided lands prior to its distribution.

(c) If it appears that a person has engaged or is about to engage in an act or practice constituting a violation of this chapter, or a rule or order hereunder, the

director, with or without prior administrative proceedings, may bring an action in the circuit court to enjoin the acts or practices and to enforce compliance with this chapter or any rule or order hereunder. Upon proper showing, injunctive relief or temporary restraining orders shall be granted, and a receiver or conservator may be appointed. The director is not required to post a bond in any court proceedings.

(d) The director may intervene in a suit involving subdivided lands. In any suit by or against a subdivider involving subdivided lands, the subdivider promptly shall furnish the director notice of the suit and copies of all pleadings.

(e) The director may, but shall not be obligated to:

- (1) Accept registrations filed in other states or with the federal government;
- (2) Contract with similar agencies in this State or other jurisdictions to perform investigative functions;
- (3) Accept grants-in-aid from any source.

(f) The director shall cooperate with similar agencies in other jurisdictions to establish uniform filing procedures and forms, uniform public offering statements, advertising standards, rules, and common administrative practices.

(g) The director may seek certification of this chapter from the Secretary of Housing and Urban Development pursuant to 15 U.S.C. section 1708.

(h) The director, from time to time, may hire consultants, who shall not be subject to chapters 76 and 77, to do any detailed inspection reports permitted or required by this chapter, the cost of which shall be borne by the applicant pursuant to section 484-20(b)(3).

(i) The director, from time to time, may hire consultants in connection with the review of a subdivider's application for a preliminary or final order of registration. The consultant shall be asked to review thoroughly the application for the purpose of examining its compliance with the requirements of this chapter and any rules adopted, including the documentation and other materials provided in connection therewith, and the disclosure thereof in the public offering statement, a final order of registration, or any amended public offering statement to be provided to the purchasers. Upon completing the review, the consultant shall provide a written analysis of the application and any public offering statement and an opinion of the nature and extent to which the application and any public offering statement comply with this chapter and the rules adopted pursuant thereto. The consultants shall not be subject to chapters 76 and 77, and the cost of retaining them shall be borne by the subdivider.

§484-11 Investigations and proceedings. (a) The director of commerce and consumer affairs may:

- (1) Make necessary public or private investigations within or outside of this State to determine whether any person has violated or is about to violate this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder;
- (2) Require or permit any person to file a statement in writing, under oath or otherwise as the director determines, as to all the facts and circumstances concerning the matter to be investigated.
- (b) For the purpose of any investigation or proceeding under this chapter, the director or any officer designated by rule may administer oaths or affirmations, and upon its own motion or upon request of any party shall subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence.
- (c) Upon failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the director may apply to the circuit court for an order compelling compliance.
- (d) Except as otherwise provided in this chapter, all proceedings under this chapter shall be in accordance with chapter 91.

§484-12 Cease and desist orders. (a) If the director determines after notice and hearing that a person has:

- (1) Violated this chapter;
- (2) Directly or through an agent or employee knowingly engaged in any false, deceptive, or misleading advertising, promotional, or sales methods to offer or dispose of an interest in subdivided lands;
- (3) Made any substantial change in the plan of disposition and development of the subdivided lands subsequent to the order of registration without obtaining prior written approval from the director;
- (4) Disposed of any subdivided lands which have not been registered with the director or are exempted under this chapter;

- (5) Violated any lawful order or rule of the director; the director may issue an order requiring the person to cease and desist from the unlawful practice and to take such affirmative action as in the judgment of the director will carry out the purposes of this chapter.
- (b) If the director makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order the director may issue a temporary cease and desist order. Prior to issuing the temporary cease and desist order, the director whenever possible by telephone or otherwise shall give notice of the proposal to issue a temporary cease and desist order to the person. Every temporary cease and desist order shall include in its terms a provision that upon request a hearing will be held promptly to determine whether or not it becomes permanent.

§484-13 Revocation. (a) A registration may be revoked by the director after notice and hearing upon a written finding of fact that the subdivider has:

- (1) Failed to comply with the terms of a cease and desist order;
- (2) Been convicted in any court subsequent to the filing of the application for registration for a crime involving fraud, deception, false pretenses, misrepresentation, false advertising, or dishonest dealing in real estate transactions;
- (3) Disposed of, concealed, or diverted any funds or assets of any person so as to defeat the rights of subdivision purchasers;
- (4) Failed faithfully to perform any stipulation or agreement made with the director as an inducement to grant any registration, to reinstate any registration, or to approve any promotional plan or public offering statement;
- (5) Made intentional misrepresentations or concealed material facts in an application for registration or in the public offering statement.

Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

- (b) If the director finds after notice and hearing that the subdivider has been guilty of a violation for which revocation could be ordered, the director may issue a cease and desist order instead.

§484-14 Judicial review. Proceedings for judicial review shall be in accordance with chapter 91.

§484-15 Penalties. Any person who wilfully violates this chapter or a rule adopted under it or any person who wilfully, in an application for registration or exemption makes any untrue statement of a material fact or omits to state a material fact is guilty of a felony and may be fined not less than \$5,000 or double the amount of gain from the transaction, whichever is the larger but not more than \$250,000; or may be imprisoned for not more than two years, or both.

§484-16 Civil remedy. (a) Any person who disposes of subdivided lands in violation of section 484-4, or who in disposing of subdivided lands makes an untrue statement of a material fact, or who in disposing of subdivided lands omits a material fact required to be stated in a registration statement, an application, or public offering statement or necessary to make the statements made not misleading, is liable as provided in this section to the purchaser unless in the case of an untruth or omission it is proved by the subdivider that the purchaser knew of the untruth or omission, or that the person offering or disposing of subdivided lands did not know and in the exercise of reasonable care of a person in such person's occupation could not have known of the untruth or omission, or that the purchaser did not rely on the untruth or omission.

(b) In addition to any other remedies, the purchaser, under the preceding subsection, may recover the consideration paid for the lot, parcel, unit, or interest in subdivided lands together with interest at the rate provided for in section 478-3, from the date of payment, property taxes paid, costs, and reasonable attorneys fees less the amount of any income received from the subdivided lands upon tender of appropriate instruments of reconveyance. If the purchaser no longer owns the lot, parcel, unit, or interest in subdivided lands, the purchaser may recover the amount that would be recoverable upon a tender of a reconveyance less the value of the land when disposed of and less interest at the rate provided for in section 478-3 on that amount from the date of disposition.

(c) Every person who directly or indirectly controls a subdivider liable under subsection (a), every general partner, officer, or director of a subdivider, every person occupying a similar status or performing a similar function, every employee of the subdivider who materially aids in the disposition, and every agent who materially aids in the disposition is also liable jointly and severally with and to the same extent as the subdivider, unless the person otherwise liable sustains the burden of proof that he did not know and in the exercise of reasonable care of a person in such person's occupation could not have known the existence of the facts by reason of which the liability is alleged to exist. There is a right to contribution as in cases of contract among persons so liable.

(d) Every person whose occupation gives authority to a statement which with the person's consent has been used in an application for registration or public offering statement, if the person is not otherwise associated with the subdivision and development plan in a material way, is liable only for false statements and omissions in the person's statement and only if the person fails to prove that the person did not know and in the exercise of the reasonable care of a person in the person's occupation could not have known of the existence of the facts by reason of which the liability is alleged to exist.

(e) A tender of reconveyance may be made at any time before the entry of judgment.

(f) No person shall be entitled to recover under this section unless the person has commenced action for such recovery within four years after the person's first payment of money to the subdivider in the contested transaction.

(g) Any stipulation or provision purporting to bind any person acquiring subdivided lands to waive compliance with any provision of this chapter or any rule or order under it shall be void.

(h) The rights and remedies provided by this chapter shall be in addition to any and all other rights and remedies that may exist at law or in equity.

§484-17 Jurisdiction. Dispositions of subdivided lands are subject to this chapter, and the circuit courts of this State have jurisdiction in claims or causes of action arising under this chapter, if:

- (1) The subdivided lands offered for disposition are located in this State; or
- (2) The subdivider's principal office is located in this State; or
- (3) Any offer or disposition of subdivided lands is made in this State, whether or not the offeror or offeree is then present in this State, if the offer originates within this State or is directed by the offeror to a person or place in this State and received by the person or at the place to which it is directed.

§484-18 Interstate rendition. In the proceedings for extradition of a person charged with a crime under this chapter, it need not be shown that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding or other state.

§484-19 Service of process. (a) In addition to the methods of service provided for in the Hawaii Rules of Civil Procedure, service may be made by delivering a copy of the process to the office of the director of commerce and consumer affairs, but it is not effective unless the plaintiff (which may be the director in a proceeding instituted by it):

- (1) Forthwith sends a copy of the process and of the pleading by certified mail to the defendant or respondent at the defendant's or respondent's last known address; and
- (2) The plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any or within such further time as the court allows.

(b) If any person, including any nonresident of this State, engages in conduct prohibited by this chapter or any rule or order hereunder, and has not filed a consent to service of process and personal jurisdiction over the person cannot otherwise be obtained in this State, that conduct authorizes the director to receive service of process in any noncriminal proceeding against the person or the person's successor which grows out of that conduct and which is brought under this chapter or any rule or order hereunder, with the same force and validity as if served on the person personally. Notice shall be given as provided in subsection (a).

§484-20 Fees and inspection expenses. (a) Notices of filing pursuant to section 484-8 shall not be issued until the applicant has paid to the director the proper registration or consultant fees, and has advanced the inspection expenses set forth in subsection (b). Neither the registration or consultant fees, nor the advanced inspection expenses shall be refunded regardless of whether the application for registration is rejected or approved; provided that the director may return any unused inspection expenses monies advanced under this section. The registration fee shall be based upon the number of lots, parcels, units, or interests to be registered at the following rates:

- | | | |
|-----|-----------------------|-------|
| (1) | up to 100 lots..... | \$100 |
| (2) | 101 to 500 lots | \$200 |
| (3) | over 500..... | \$300 |

(b) In addition to the registration and consultant fees, the applicant shall deposit with the director sufficient sums to cover inspection expenses established by rules adopted in accordance with chapter 91.

- (c) The director may waive the requirement for inspection.

(d) The director, from time to time, may raise the registration fee, consultant fees, and inspection expenses under this section by rules adopted in accordance with chapter 91.

§484-21 Uniformity of interpretation. This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

§484-22 Short title. This chapter may be cited as the "Uniform Land Sales Practices Act."